

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. EP 09-020

Bankruptcy Case No. 08-21344-JBH

**MICHELLE HANDY,
Debtor.**

**CHRISTOPHER PARKER,
Appellant,**

v.

**MICHELLE J. HANDY,
Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Maine
(Hon. James B. Haines, Jr., U.S. Bankruptcy Judge)**

**Before Hillman, Boroff, and Rosenthal,
United States Bankruptcy Appellate Panel Judges.**

Stanley Greenberg, Esq., on brief for Appellant.

Daniel L. Cummings, Esq., on brief for Appellee.

October 23, 2009

Hillman, U.S. Bankruptcy Appellate Panel Judge.

Christopher Parker (“Parker”) appeals from bankruptcy court orders (1) denying his motion for relief from stay (the “Order”) in which he sought permission to prosecute his state court appeal against Michelle Handy (the “Debtor”),¹ and (2) ruling that § 524(a)(2) would bar that prosecution (the “Amended Order,” collectively, the “Orders”).² Underlying the Orders was the bankruptcy court’s conclusion that, rather than asserting an *in rem* claim against the Debtor’s residence, Parker was impermissibly asserting an *in personam* claim against the Debtor. Because we conclude that the bankruptcy court did not err in reaching this conclusion, we **AFFIRM**.

BACKGROUND

Prior to the Debtor’s bankruptcy, Parker sued the Debtor and her former husband in Maine District Court pursuant to Maine’s Uniform Fraudulent Transfer Act.³ In the complaint, Parker alleged that the Debtor’s former husband fraudulently transferred funds to the Debtor and that she applied the funds toward the purchase of her residence. Parker sought an award of money damages and the imposition of a constructive trust on that portion of her residence that

¹ In the Order, the bankruptcy court also denied the Debtor’s motion to avoid judicial lien based on the lack of a lien. Parker did not include this portion of the Order in his Statement of Issues to Be Presented or in his brief and has therefore waived the argument.

² Unless otherwise indicated, the terms “Bankruptcy Code,” “section” and “§” refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37 (“BAPCPA”). All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure.

³ All references to the “Fraudulent Transfer Act” are to Me. Rev. Stat. Ann. tit. 14, § 3571 (2009), *et seq.*

pertained to the proceeds she had received from her former husband. Shortly after Parker filed the complaint, he filed a *lis pendens*.⁴

The Debtor's former husband filed for bankruptcy protection and was subsequently dismissed from the lawsuit. The lawsuit proceeded to trial and the state court entered judgment in favor of the Debtor. Parker appealed.

The Debtor filed a chapter 7 petition while Parker's appeal was pending. Parker subsequently sought relief from stay to prosecute the appeal (the "Stay Motion"). In support, Parker asserted that he held an unsecured *in rem* claim against the Debtor because he sought an order of sale of the Debtor's residence as part of his state court lawsuit and because he had filed a *lis pendens*. The Debtor filed an objection in which she argued that Parker held no right to payment because the state court had ruled against Parker prior to the Debtor's bankruptcy. The Debtor further argued that Parker did not hold a *lis pendens* as he had failed to comply with the applicable procedure. Lastly, the Debtor argued that Parker did not hold an *in rem* claim as he held no claim to or interest in her residence. The Debtor also filed a motion to avoid Parker's lien.

The bankruptcy court held a hearing on both motions. It denied the Stay Motion because Parker's claim was unsecured and *in personam*, and thus would be discharged in the course of the Debtor's chapter 7 case absent denial of the Debtor's discharge.⁵ The court explained that Parker failed to obtain any provisional remedy when he filed his state court action and therefore

⁴ On appeal, Parker has abandoned the argument that the *lis pendens* created a lien on the Debtor's residence.

⁵ The order discharging the Debtor issued on the day of the hearing.

held no interest in the Debtor's residence under the Fraudulent Transfer Act. The bankruptcy court noted that Parker admitted in his pleadings that he is an unsecured creditor and that the *lis pendens* was not a lien. The court also noted that Parker had failed to object to the Debtor's claim of exemption and, as an unsecured creditor, could not pursue her exempt property. The court denied the Debtor's request to avoid the lien as Parker did not hold a lien.

Thereafter, Parker filed a Motion to Amend Order wherein he requested an order clarifying whether the discharge injunction would bar the prosecution of his appeal. The bankruptcy court issued the Amended Order which explicitly provided that § 524(a)(2) would bar the prosecution of the appeal. This appeal followed.

JURISDICTION

A bankruptcy appellate panel may hear appeals from “final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)].” Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). “A decision is final if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” Id. at 646 (citations omitted). While all orders granting relief from the automatic stay are final and appealable, not all orders denying relief from stay are final and appealable. Caterpillar Fin. Servs. Corp. v. Braunstein (In re Henriquez), 261 B.R. 67, 70 (B.A.P. 1st Cir. 2001). An order denying relief from stay is a final, appealable order where it completely resolves all issues between the parties with respect to the matter for which relief from stay was sought. Id. at 71 (concluding that order denying relief from stay was not final where proceeding was summary in nature and bankruptcy court had not rendered final determination as to priority of creditor's lien).

Here, the Orders are final because they conclusively determine the questions of whether Parker may proceed with his state court appeal and whether he holds an interest in the Debtor's property.

See id.

STANDARD OF REVIEW

The Panel generally reviews findings of fact for clear error and conclusions of law de novo. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d 714, 719 n.8 (1st Cir. 1994).

DISCUSSION

The bankruptcy court issued the Orders on the basis that Parker did not hold an *in rem* claim against the Debtor's residence but rather he held only an *in personam* claim against the Debtor. On appeal Parker contends that: (1) he holds an *in rem* claim against the Debtor in her bankruptcy case because he sought an *in rem* remedy in his state court action; (2) he may pursue his state court action post-discharge despite the fact that he did not obtain an attachment prior to the Debtor's bankruptcy; and (3) he was not obligated to object to the Debtor's claim of homestead.

With respect to his first argument, the question is whether Parker held an interest in the Debtor's residence at the time she filed her petition. Parker contends that he held an *in rem* claim because he sought an order selling the Debtor's residence in his state court complaint. The bankruptcy court found, and Parker agreed, that Parker was not successful at obtaining an attachment or any other provisional remedy when he filed his state court action and that he was an unsecured creditor. Further, judgment had entered against Parker in state court before the Debtor filed for relief. Accordingly, at the time the Debtor filed for relief Parker held an *in*

personam claim against the Debtor and not an *in rem* claim against her residence. As the Debtor has since been granted a discharge, the terms of § 524(a) bar Parker from pursuing this claim including proceeding with his appeal.

With respect to his second argument, Parker contends that the Bankruptcy Code allows him to pursue a post-discharge fraudulent conveyance claim against the Debtor. In support, Parker cites to Millbury Nat'l Bank v. Palumbo (In re Palumbo), 353 B.R. 37, 42 (Bankr. D. Mass. 2006); Kronides v. O'Boy, 2003 Conn. Super. LEXIS 265 (Conn. Super. Ct. Feb. 3, 2003); and J.P. Castagna, Inc. v. Castagna, 1995 Conn. Super. LEXIS 1097 (Conn. Super. Ct. Apr. 7, 1995). These cases, however, are wholly inapposite.

In Palumbo, a bank held an unsecured claim against a husband and wife. 353 B.R. at 39. The husband transferred his interest in their residence to the wife for nominal consideration. Id. The wife filed a bankruptcy petition and subsequently received her discharge. Id. During the pendency of the wife's case, the husband filed for relief under chapter 7. The bank and the chapter 7 trustee filed a complaint against the husband to set aside the transfer of his interest in the residence and the husband moved to dismiss the complaint on the grounds that the plaintiffs had failed to join his wife as an indispensable party. Id. The bankruptcy court denied the motion to dismiss, holding that although it did not have *in personam* jurisdiction over the wife, it had *in rem* jurisdiction over the residence, as it could become property of the husband's estate. Id. In reaching this conclusion, the bankruptcy court did not rely on the proposition that the bank held an *in rem* claim that would survive discharge, but rather on the idea that "[b]ankruptcy jurisdiction, at its core, is *in rem*." Id. at 41 (citing Central Virginia Community College v. Katz, 546 U.S. 356 (2006)). As such, Palumbo does not stand for the proposition that an unsecured

creditor can somehow create an *in rem* claim that will survive a debtor's discharge, but rather that the bankruptcy court can exercise *in rem* jurisdiction over property that may belong to the estate.

In the two Connecticut state court decisions to which Parker cited, the creditor had brought the fraudulent transfer actions against both the transferor/husband and the transferee/wife. See Krondes, 2003 Conn. Super. LEXIS 265, at *3 n.1; Castagna, 1995 Conn. Super. LEXIS 1097, at *2. The creditors dismissed the actions as to the transferors after they obtained their discharges. The courts concluded, however, that a post-discharge fraudulent transfer action may proceed against a non-debtor spouse. These cases do not stand for the proposition that a creditor may pursue a debtor for an *in personam* claim post-discharge.

For his last argument, Parker contends that the bankruptcy court erred in holding that Parker was barred from resort to the Debtor's residence because he had not objected to her claimed homestead exemption. Parker argues that the Debtor cannot exempt property from the estate that is subject to *in rem* claims. This argument fails, however, as Parker does not hold an *in rem* claim against the Debtor's residence.

CONCLUSION

The bankruptcy court correctly determined that Parker holds an *in personam* claim against the Debtor and, as a result of the Debtor's discharge, he can no longer pursue the appeal of the adverse state court judgment. Accordingly, the Orders are **AFFIRMED**.